THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.20602 of 2007

DATED:28.11.2007

Between:

C.Mangamma, W/o.C.Krishnaiah.

.. PETITIONER

versus

The District Collector,
C.S., Mahaboobnagar,
And others.

.. RESPONDENTS

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.20602 of 2007

ORDER:

Heard Sri C.Buchi Reddy, learned Counsel representing the writ petitioner, and the learned Assistant Government Pleader for Civil Supplies.

Learned Counsel representing the writ petitioner, Sri C.Buchi Reddy, would maintain that the reduction of cards without following the guidelines and circulars governing the filed definitely cannot be sustained. Learned Counsel had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and also the stand taken in the counter affidavit and would maintain that in the light of the respective stands taken by the parties at least the matter to be remitted again to the competent authority for taking a fresh decision in the light of the circulars governing the field. Learned Counsel also placed reliance on certain decisions.

On the contrary the learned Assistant Government Pleader for Civil Supplies would maintain that a fair price shop dealer is not having any legal right, as such, to a claim relating to the number of cards. Even otherwise, in such matters if as matter of policy in accordance with the circular, decisions had been taken, normally the same not to be interfered with by a writ court. Learned Assistant Government Pleader for Civil Supplies placed strong reliance on certain decisions.

The Writ Petitioner filed the present writ petition praying for a writ of mandamus declaring the proceedings of the first respondent vide CS10/246/2007, dated 09.07.2007, as confirmed in Appeal No.N1/6122/2007, dated 19.09.2007, and consequential proceedings of the second respondent vide No.F/55/2007, dated 21.07.2007 and 14.09.2007, as arbitrary, illegal and violative of principles of natural justice, contrary to the Government Memo No.148/CS.I/98-1, dated 22.01.1999, and violative of Articles 14 and 21 of the Constitution of India and to set aside the same and also praying that the costs be awarded to the petitioner and pass such other order or orders as this Court deems fit and proper in the circumstances of the case.

It is averred that as per the scheme formulated by the Government for distribution of essential commodities to the consumers through fair price shop the respondents allotted the fair price shop to Peddapur Village including Veeraram Village. The petitioner has been appointed as a fair price shop dealer through due process, and authorities have given her licence and authorization to run the fair price shop. Accordingly, the petitioner was distributing the commodities for both the villages since 13 years as per schedule regularly without any complaint, or allegations from the authorities or cardholders. Further it is stated that as the matter stood thus, the first

respondent issued sanction orders vide proceedings No.CS10/246/2007, dated 09.07.2007, for creating a new fair price shop at Veeraram Village on the ground that most of the cardholders of Veeraram Village are facing difficulties in getting the essential commodities from the existing fair price shop, which is located at a distance of about 3 Kms, and also directed to bifurcate the existing cards from existing fair price shop dealer of Peddapur Village of Maddur Mandal, and also directed the second respondent to issue the separate orders on the basis of proposals specifying the area and cards to be attached to each fair price shop and report the same to the first respondent's office and also directed to take necessary action for the appointment of suitable candidate as a dealer as per the guidelines issued by the Government in Civil Supplies Department. It is further submitted that the action and proceedings No.CS10/246/2007, dated 09.07.2007, of the first respondent, without giving any notice or opportunity to the petitioner before issuing the said proceedings are violation of principles of natural justice and contrary to the guidelines framed and instructions issued by the Government. It is further averred that as per the guidelines issued by the Government vide Memo No.148/CS.I/98-1, dated 22.01.1999, for creation of a new fair price shop the number of cards should not be less than 350, but whereas in the present case the total cards are only 457 and on bifurcation of the same, Peddapur Village is allotted only 218 cards and Veeraram Village is allotted 214 cards, and as such, the impugned order of the first respondent is contrary to the orders of the Government. It is further submitted that the said allotment of cards to the fair price shop are not viable. Therefore, the bifurcation is not permissible under law because presently both the villages have attached only 457 cards. It is also further stated that the distance

between Peddapur Village and Veeraram Village is about 1 Km and to that effect the Gram Panchayat has also issued a certificate, and further the petitioner is also ready to distribute the commodities at Veeraram Village, for the same also the Gram Panchayat passed a resolution and the petitioner also undertook to distribute the commodities in the Veeraram Village. It is also averred that the second respondent has issued sanction orders by bifurcating the existing shop at Peddapur Village vide proceedings No.F/55/2007, dated 21.07.2007, even before the expiry of the limitation to prefer an appeal before the Director of Civil Supplies. Therefore, the action initiated by the second respondent is illegal and unsustainable in law and without jurisdiction. It is also further stated that being aggrieved by the first and second respondents orders the petitioner preferred an appeal before the Director of Civil Supplies on 20.08.2007 and the same was dismissed without applying the mind by confirming the first respondent's order without looking into the facts and circumstances of the case. It is also stated that even pending the appeal before the Director of civil Supplies, the second respondent i.e., the Revenue Divisional Officer issued notification vide proceedings F/55/2007, dated 14.09.2007, by inviting the applications for appointment of new fair price shop dealer at Veeraram Village and the last date is fixed to receive the application as 22.09.2007 and the interviews are going to be conducted on 24.09.2007 at 11.00 am. In such circumstances, the writ petitioner being left with no other option approached this Court praying for appropriate relief.

In the counter affidavit filed sworn to by the Revenue Divisional Officer, Narayanpet Division, second respondent herein, it is averred that on receipt of the representation from the villagers of Veeraram Village of Maddur Mandal for creation of new fair price shop at

Veeraram Village on 09.01.2007, the same has been sent to the Tahasildar, Maddur, with a direction to examine the representation as per the existing Government norms. The Tahasildar, Maddur, has submitted proposals for creation of new fair price shop at Veeraram Village duly bifurcating the cards from the existing fair price shop of Peddapur Village. According to the report of the Tahasildar, Maddur, there are 457 cards attached to the existing shop located at Peddapur Village including the ration cards of Veeraram Village. Veeraram Village is situated at a distance of 3 Kms away from the existing fair price shop and the cardholders are facing much difficulty in getting essential commodities from the existing fair price shop, Peddapur Village. The proposals have been examined. According to the Tahasildar, Maddur, it is seen that the distance between Paddapur and Veeraram Village is 3 Kms and it is not correct that the distance mentioned between above two village is 1 Km as contended by the writ petitioner. As a matter of fact, the Government's intention is to locate the fair price shops within the cardholders reach for their benefit and convenience. It is also averred that in view of the recommendation of the Tahasildar and in order to facilitate the consumers of Veeraram Village, the proposals for creation of new fair price shops have been submitted to the District Collector, Mahaboobnagar, for creation of new fair price shop at Veeraram Village with 241 cards while bifurcating the existing cards i.e., 457 from the existing fair price shop at Peddapur Village. The Collector, Mahaboobnagar, has sanctioned new fair price shop at Veeraram village with 241 cards and leaving 216 cards for Peddapur Village vide Collector, Mahabubnagar, Proceedings No.CS10/246/07, dated 09.07.2007. As per the directions of the Collector, Mahaboobnagar, separate orders were issued on the basis of proposals received by the

Tahasildar, Maddur, specifying the area and cards to be attached to Fair Price Shop dealer, Peddapur on 31.07.2007 through Tahasildar, Maddur. As such the existing shop and the newly created shop is 1 Km is false. Further it is submitted that the people of Veeraram Village were hither to used to go to fair price shop, Peddapur Village to draw their essential commodities by trekking a distance of 3 Kms. New fair price shop was created on the request of villagers of Veeraram Village to avoid difficulties and hard ship in getting essential commodities from the existing fair price shop. In view of the distance criteria a separate new fair price shop has been created at Veeraram Village. Hence the proceedings of the first respondent are legal and purely in the interest of cardholders only and in accordance with principles of natural justice. It is stated that it is a fact that the fair price shop dealer is working as fair price shop dealer since 13 years. The bifurcation of fair price shop has been made on the representation of the villagers of Veeraram Village to facilitate and remove the hardship of the villagers, but not with any ill motive of putting the petitioner to hard ships. It is also further averred that the Collector, Mahaboobnagar, respondent No.1, herein has issued orders vide proceedings No.CS10/246/2007, dated 09.07.2007, for creating new fair price shop at Veeraram Village on the ground that most of the card holders are facing difficulties in getting the essential commodities from the existing fair price shop which is located at a distance of 3 Kms as per the report of the Tahasildar. But the contention of the writ petitioner that the distance between two villages is only 1 Km is incorrect. However, the creation of new fair price shop is made on the basis of guidelines that every village should have a separate fair price shop. Therefore, the petitioner cannot have any grievance. It is also stated that each village/habitation shall have a separate fair price shop as

contemplated in Government Memo No.148/CS1/99-1 dated 22.01.1999 and 40829/CS/V-1/91-I dated 26.07.1991. It is further submitted that the total number of cards of both these two villages is presently 457 and the present allotment to this shop is 160-00 Qtls of rice, 9-00 Qtls of Sugar and 2700 litres of Kerosene Oil. After bifurcation of this present shop it will have 50% of the above allotment, which is still economically viable. As per the instructions communicated through the Government Memo No.40829/CS/IV-1/91-1 F&A Department, dated 26.07.1991, each and every village should have a separate fair price shop, and the fair price shop should be within a distance of one Km from the residences of cardholders. In this case, the distance from the existing fair price shop to that of the newly created shop is 3 Kms and both are separate villages. Therefore, the new fair price shop with 241 cards having 80-00 Qtls of rice, 4-50 Qtls of Sugar and 1350 litres of P.D.S.Kerosene as its monthly allotment is created in the interest of cardholders of Veeraram Village. Further, it is stated that the distance between Peddapur Village and Veeraram Village is 3Kms, but not 1 Km as contended by the writ petitioner, and the Gram Panchayat is not competent to issue the distance certificate. As a matter of fact a distance certificate is to be issued by Roads and Buildings Department. The Tahasildar, Maddur, who is considered as proper authority, reported the distance as 3 Kms. Further, it is submitted that essential commodities should be distributed in the designated fair price shop according to the conditions of the authorization, and permission will not be given to distribute the essential commodities at other than designated location. The resolution passed by the Gram Panchayat regarding distribution of essential commodities at Veeraram Village through the writ petitioner is not permissible according to the rules. It is further stated that as per

the directions of the District Collector, Mahaboobnagar, separate orders regarding bifurcation of area and cards have been issued on 21.07.2007 and got served on the writ petitioner through Tahasildar, Maddur, on 31.07.2007 and notification has been issued on 14.09.2007 i.e., after expiry of 30 days time for filling up the vacancy of newly created fair price shop dealer. There is no truth in the contention of the petitioner that bifurcating the existing shop has been made without giving sufficient time. Certain further averments were made in paragraphs 7 and 8 also of the counter affidavit and dismissal of the Writ Petition has been prayed for.

It is no doubt true that even while implementing the policy, the concerned authority may have to look into the circulars and the guidelines governing the field. The ground of distance and the ground of economic viability, these are the two grounds, which have been taken by the writ petitioner, and elaborate submissions were made. No doubt strong reliance was placed on the decision of the Division Bench in **B.Suresh v. District Collector, Nizamabad**[1], and certain submissions relating to violation of principles of natural justice also had been made. In **Shanti Devi v. State of Haryana**[2] at paragraph 4, it was observed as under:

> "Under the provisions of the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, which order has been framed under the provisions of the Essential Commodities Act, 1955, a Fair Price Shop Dealer has no right to be appointed as such dealer. The licence which such dealer has obtained under the provisions of the Act to deal with the commodities has not been cancelled. The right to trade under Article 19(1)(g) of the Constitution of India is not being affected in any manner. The Government, as a policy decision, decided to reduce the number of cards per dealer. Such decision does not affect the rights, if any, of the Fair Price Shop Dealers and as such the High Court was in error to hold that they were to be given

any notice prior to the impugned decision of the State Government."

Further strong reliance was placed on the decision of the Apex Court in **Sarkari Sasta Anaj Vikreta Sangh v. State of Madhya Pradesh**[3].

Though an attempt was made by the writ petitioner to show that the circulars in vogue had not been followed, in the light of the clear stand taken in the counter affidavit filed by the respondents, and also in the light of the views expressed by the Apex Court in the decisions referred to supra, in such matters normally writ courts not to interfere. In the light of the same, the writ petition, being devoid of merits, the same shall stand dismissed. No order as to cots.

(P.S.NARAYANA, J)

Dated:28.11.2007
vs

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[1] 1997 (4) ALT 481 (DB)
[2] 2000 (1) ALD 9 (SC)
[3] (1981) 4 SCC 471